

**IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION II**

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	Court of Appeals Cause No. 49482-5-II
	)	
v.	)	STATEMENT OF ADDITIONAL
	)	GROUND FOR REVIEW
	)	
PATRICK JAMES EDWARD DOCKERY,	)	
	)	
Appellant.	)	

I Patrick Dockery, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

**Additional Ground I**

Mr. Dockery respectfully requests that you reverse his conviction because the prosecutor knowingly elicited and presented false evidence from Daniel Mathis, and Gerald Kelly. Napue v. Illinois, 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959); Mooney v. Holohan, 294 U.S. 103, 55 S. Ct. 340, 79 L. Ed. 791 (1935).

Prosecutor elicited false testimony from Daniel Mathis and Gerald Kelly. Both of these witnesses were not knowledgeable to the facts of the case. I believe that the state only used there testimony because they contradicted the defense to wrongfully discredit or impeach testimony that we were actually locked in the property due to no key for second gate. The State also contradict two of the States witnesses testimony as well. Officer Robert Crawford and MJN also the states witnesses, testified about the GATES. MJN described how to get to the camp ground and described the GATES to Officer Crawford. MJN testified we “across the street to **pick up (the key)**, and **I think there was about (two gates) we had to go through,** and then it was - we turn on a dirt road and it takes you to the site.”MJN only went to the camp site one time which is stated in the court record. So how would she know there were 2 gates when describing how to get to the property so the officer could take photographs unless it was true? Also how would the defense witness know of both locked gates if they never returned to the locked property to witness that the owners had put them up if in fact they put them up after the actual camping trip?

**ADDITIONAL GROUNDS I (continued)**

**Daniel Mathis and Deputy Prosecutor**

Q. And when did you put that second gate up?

A. We put that second gate up after - probably after this incident here happened. Probably, I don't know, a couple two or three months or six months after this happened.

**And again...**

Q. Okay. And just to be clear. Is that the main gate, the one that existed in July?

A. That's the main gate to get into all of the property there.

**And a third time...**

Q. (BY MS. JANY) I'm handing you now what has been marked or already admitted as State's Exhibit 6. Can you identify what's in that picture?

A. That's - that's the gate that this - the gate that we put up after this incident happened.

**Gerald Kelly and Deputy Prosecutor**

Q. Okay. So a while. And then how - how are those two properties separated? Are they identifiable as separate or . . .

A. Yeah. They - survey line through it and a gate on his property --

Q. Okay.

A. -- now.

**And again...**

Q. That's okay. So who had the key for that weekend?

A. Nobody. They were the only ones that had access --

Q. Okay.

A. -- that I know of.

Q. Sure.

A. With the - they was supposed to lock it when they go in, lock it when they come out.

Q. So if they needed to get in and out, they had the key in order to do that?

A. Yeah.

Q. And whose property did the Dockerys actually stay on, was it yours or Mr. Mathis' that weekend?

MR. BAUM: Objection as to foundation. Basis of knowledge. THE COURT: Sustained.

MS. JANY: Your Honor, may I approach.

THE COURT: You may.

Q. (BY MS. JANY) Mr. Mathis, I'm handing you what has already been admitted as State's Exhibit 4. What are we seeing in that photograph?

A. This is my gate.

### **ADDITIONAL GROUNDS I (continued)**

Q. And that's the main gate to the property?

A. The only gate. Yep.

Q. And to your knowledge, is there a gate to Mr. Mathis' property?

A. There is now.

Q. Okay.

A. When he had it surveyed, he put a gate up. There wasn't - it - a gate there at the time that Pat and them came in.

#### **Mayana Ng (States Witness) questions by Deputy Prosecutor** Page 161 Lines 15-25

Q. Okay. And where did you go or what did you do once you met up with Lora and the rest of the girls at the rest area?

A. We went to the store and picked some stuff up and went to the campsite to set up.

Q. Okay. And could you describe what the area was like, the area of the campsite, for us?

A. We had to go across the street to **pick up the key**, and I **think there was about two gates we had to go through**, and then it was - we turn on a dirt road and it takes you to the site.

#### **Officer Robert Crawford (States Witness) questions by Deputy Prosecutor** Page 497 Lines 7-11

Q. Okay. And how well did Mayana remember how to locate the campsite and where you were?

A. She had a pretty clear recollection of the area and a description - described the gates and knowledge of the roads.

#### **Lora Dockery (Defense Witness) questions Deputy Prosecutor**

Q. Isn't it true that you previously stated in your interview that on several occasions the reason you didn't take Mayana home to her parents is because you were behind two locked gates and you didn't have the key to get out?

A. We were behind gates - two locked gates. I'm not particularly sure who had the first key to the first gate or the second gate, but I - earlier I had the key to the first gate where you get out. But there were campers next to us and I believed James Kelly got the key from me when he went home on his quad across - because he was across the - the main road out there. And that's why he came back the next morning to have breakfast with us and give us the key.

Q. But isn't it true in your interview that you said three times that you were behind two locked gates and that's why you couldn't leave?

A. I don't know if I said that.

#### **CLOSING ARGUMENT Gate**

No reason for Mr. Kelly to tell you that the family didn't have the key the entire time. No reason for Them not to tell you the truth that there was only one gate when this raped occurred. Pages 617, line 25, 618 lines 1-4

#### **Referencing Lora Dockery**

She clearly did not tell you the truth about the gates being locked and about having no way to get out to take Mayana home. She talked about two gates and being locked in. None of that is true. Page 621 Lines 1-5

### **ADDITIONAL GROUNDS I (continued)**

State knew this was untrue because they are the ones who took the statements and interviewed there own witnesses as to the facts of the case. For them to present witnesses that directly contradicted there own KEY witnesses testimony they in fact knew to be false to discredit the defense witness is a huge injustice and can be proven in the record on its own.

The Deputy Prosecutor went above and beyond the line of truth to get a conviction by presenting known false evidence to the jury that Lora Dockery was not telling the truth about being stuck behind the locked gates.

Knowingly presenting false evidence or testimony at trial to affect a jury's belief that the defense witnesses testimony is not credible, just to tip the scales in the states favor goes against the prosecutors ethical duty to uphold truth in justice. Its no justice at all to convince at all costs instead of seeking to present the truth to serve justice. *Morris v. Ylst*, 447 F. 3d 735, 743 (9thCir. 2006)

### **Additional grounds II**

#### **BRADY VIOLATIONS**

**Mr. Dockery argues that the suppression by the prosecution of evidence favorable to an accused upon request violates due process when that evidence is material either to guilt or to punishment. *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).**

#### **STATEMENT WITHHELD**

1. Tumwater police department took first statement of MJN. MJN any Yuonhee Kim testified that they gave her first statement to the Tumwater Police Department.
2. Officer Warnock testified that he took both Yuonhee Kim and Mayana Ng's statements.
  1. Deputy Wallace testified that he met with both Yuonee and Mayana in Olympia at a texaco station ant took Yuonhee and Mayana's statements.

#### **MAYANA NG**

Q. (BY MS. JANY) Okay. And so was there a point that law enforcement became involved?

A. Yeah. She took me to the police station afterwards.

Q. Okay. What happened once law enforcement became involved?

A. I reported it. I think I wrote a report. And then they figured out that it wasn't in their county, so we had to go to the Grays Harbor County to report it.

Q. Okay. And then what happened then?

A. I wrote another report and talked with - I don't know whose - Deputy Warnock that I talked to. I don't know which one. But I talked to him with my mom and then without and then we both wrote reports.

#### **Yuonhee Kim**

Q. And then when and how did the law enforcement become involved?

A. I went to the local police in Tumwater. They took our statement and he advised us to come to Grays Harbor, because the campground was in Grays Harbor. So we came immediately to Grays Harbor and met with detective

Q. Okay. And what happened at that point when she met with the detective?

A. We met with the detective and we both gave our statements that evening.

## **Additional grounds II (continued)**

### **BRADY VIOLATIONS**

#### **DONALD WARNOCK**

Q. The mother is telling you. Okay. And then later you - you talked to the daughter?

A. Yes. When we went into the room, I had the mom start writing her statement. And then I had already talked to Mayana and she started her statement.

Q. You - October 6th, 2014, is that when you met initially with Mayana and her mother?

A. Yes

#### **Deputy DARRIN WALLACE**

Q. And then where did you respond once you had gotten assigned the case or what did you do?

A. I made an arrangement with Mayana's mom and her to get a statement from her at Black Lake Texaco in Olympia.

Q. And then what did you observe upon your arrival there in Black Lake?

A. I talked to her a little bit what happened. She just - a little bit expansion on what she provided for Deputy Warnock. And she also provided me some screen shots of text messages between her and her friend.

Defence Council questioned Mayana as to how many statements she had given, and how many she had read. Mayana stated that she gave about two.

Clearly there is a was a third statement not provided to defense.

#### **Multiple Screenshots of texts when only 1 screenshot was provided in discovery.**

3. Officer Darren Wallace testified that he got screenshots from MJN and her mother when he met them in Olympia. The only screenshot (1) we got was given to Deputy Prosecutor by Yoonhee Kim in the court house on a easier court date. There were several witnesses that saw this. If Officer Wallace did receive **screenshots** as he states under oath, those were never disclosed.

#### **Evidence Favorable To The Accused**

4. **Officer Robert Crawford** spoke to James Kelly, who also was the person who unlocked the gates for him on the day he took photographs of the campsite. James kelly was also at the camp the night of the alleged rape and the morning after the alleged rape because he was returning to unlock the gates. Mr. Kelly also owned the quad and witnessed that MJN got on the back of with Mr. Dockery. Officer Crawford spoke to James Kelly about the innocent and what he witnessed. The defense investigator tried to find this witness but was unsuccessful. If defense was supplied with this information that Officer Crawford had in fact spoken to this witness, instead of holding it a secret it

## **Additional grounds II (continued)**

### **BRADY VIOLATIONS**

would have helped Mr. Dockery as to the evidence of many factors in his case. Mr. James Kelly had possession of the KEYS to let the officer in the GATES during the investigation and during the actual camping trip. The state knew this and knew they had contact with James Kelly. This was intentionally left out of discovery and would have substantiated the testimony of the defense witnesses.

5. Deputy Prosecutor never disclosed under Brady that Officer Wallace had changed a date on a poem to alter evidence that was entered into trial in STATE OF WASHINGTON V. CHARLES R. GOTCHER No. 46119-6-II. Withholding information that an officer that is handling evidence in your case and has altered evidence in a different case is a violation Brady v. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215W Violates clearly established law to fail to disclose Brady material (see eg., Newsome v. McCabe, 256 F.3d 747, 752-3 (7th Cir., 2001); Moldowan v. City of Warren, 578 F. 3d 351, 382 (6th Cir., 2009); Owens v. Baltimore City State's Attorneys Office, 767 F.3d 379, 401 (4th Cir., 2014)). Others have denied the qualified immunity defense for a failure to disclose Brady material (see, Geter v. Fortenberry, 849 F.2d 1550, 1559 (5th Cir., 1988); Ricciuti v. New York City Transit Auth., 124 F.3d 123 (2nd Cir., 1997)).

### **Additional Ground III**

6. **Deputy Prosecutor failed to correct False testimony** she KNEW to be false. Yoonhee Kim testified that her daughter was showing signs of Anxiety and depression after the camping trip and said that it was NEW. Defense council motioned the court in Limeline to this fact. The Deputy Prosecutor provided this discovery to defense with Witness Lisa Whal's report. Deputy Prosecutor just let the jury believe this because it added power to the States case.

The prosecutor's procurement of testimony she knew to be false and her failure to correct it constitutes prosecutorial misconduct under Napue v. Illinois. Indeed, rather than tell the Court that the detective's testimony was false, she used it to argue the defendant's guilty conscience to the jury.

#### **Additional Ground IV**

**The trial court erred in not giving a unanimity instruction** and thereby violated his constitutional right to a unanimous jury verdict.

Defense council motioned for a unanimity instruction but was denied. Therefor without the ..... instruction or any other instruction the jury's verdict could have been some voting guilty for the uncharged testimony as to what happened on the cot and some voting for the testimony of what happened in the tent.

Mr. Dockery argues that the jury was confused and mislead by the evidence. The evidence presented while he was unconscious and had no knowledge of any acts whatsoever until he was awoken by MJN on top of him. Presenting this evidence without a instruction violated his right to a fair jury trial.

Criminal defendants in Washington have a right to a unanimous jury verdict.

Const, art. 1, § 21; State v. Ortega-Martinez. 124 Wn.2d 702, 707, 881 P.2d 231

(1994). When the State presents evidence of several acts that could constitute the crime charged, the jury must unanimously agree on which act constituted the crime.

State v. Kitchen, 110 Wn.2d 403, 411, 756 P.2d 105 (1988). To ensure jury unanimity, the State must either elect the act on which it relies, or the court must instruct the jury to unanimously agree that at least one particular act constituting the charged crime has

the prosecutor's misconduct was "so flagrant and ill-intentioned that it evince[d] an enduring and resulting prejudice" incurable by a jury instruction. Gregory, 158 Wn.2d at 841 (quoting Stenson, 132 Wn.2d at 718-19).

been proved beyond a reasonable doubt. Kitchen. 110 Wn.2d at 411; see also State v.

Petrich, 101 Wn.2d 566, 572, 683 P.2d 173 (1984).

But no election or unanimity instruction is required if the evidence establishes a "continuing course of conduct."

Defendants conduct must have been both the cause in fact and the proximate cause of the harm ...

mistake of fact is a defense if it negates the particular element of mens rea defined.

**The defendant was unconscious. (sleeping)**

### VIII. Cumulative Error

Finally, Mr. Dockery argues that cumulative error deprived him of his right to fair trial. The cumulative error doctrine applies when several errors occurred at the trial court level to deny the defendant a fair trial, even though no single error alone warrants reversal. *State v. Hodges*, 118 Wn. App. 668, 673-74, 77 P.3d 375 (2003).

If there are additional grounds, a brief summary is attached to this statement.

Date: 09-11-2017

Signature: \_\_\_\_\_

*Patrick Dockery*



# **PATRICK DOCKERY - FILING PRO SE**

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## **Transmittal Information**

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